



ENTERED
02/28/2019

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Chapter 11
)	
WESTMORELAND COAL COMPANY, <i>et al.</i> , ¹)	Case No. 18-35672 (DRJ)
)	
Debtors.)	(Jointly Administered)
)	
)	Re: Docket No. <u>1212</u>

**ORDER APPROVING OMNIBUS CLAIMS OBJECTION PROCEDURES
AND FILING OF SUBSTANTIVE OMNIBUS CLAIMS OBJECTIONS**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), approving the Objection Procedures attached hereto as **Exhibit 1**, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having

¹ Due to the large number of debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent in these chapter 11 cases at www.donlinrecano.com/westmoreland. Westmoreland Coal Company’s service address for the purposes of these chapter 11 cases is 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. Notwithstanding anything to the contrary in the Bankruptcy Code and the Bankruptcy Rules, and pursuant to Bankruptcy Rule 3007(c) and Bankruptcy Local Rule 3007-1, the Debtors may file Omnibus Objections that include objections to claims on any basis provided for in Bankruptcy Rule 3007(d), Bankruptcy Local Rule 3007-1, and/or the Additional Grounds.
3. The Debtors shall file and prosecute any Omnibus Objections in accordance with (a) the Objection Procedures attached hereto as **Exhibit 1**, which are hereby approved, and (b) the other procedural safeguards set forth in Bankruptcy Rule 3007(e) and Bankruptcy Local Rule 3007-1.
4. The form of Objection Notice attached hereto as **Exhibit 2** is hereby approved.
5. The withdrawal of proof of claim form attached hereto as **Exhibit 3** is hereby approved.
6. Notwithstanding anything to the contrary in this Order, the Objection Procedures, or the Objection Notice,
 - (a) Except as otherwise required by a separate order of the Court, the United States or state environmental agencies are not required to include a declaration or other statement of a person with personal knowledge of the relevant facts that support any Response with such Response;

(b) Except as otherwise required by a separate order of the Court, the United States or state environmental agencies are not required to include copies of documentation or other evidence of a claim not previously filed with a proof of claim in any Response; and

(c) Except as otherwise required by a separate order of the Court, any initial hearing concerning an Objection including a claim of the United States or any state environmental agency to which the United States or any state environmental agency has filed a Response will be treated as a status conference. For the avoidance of doubt, neither the Debtors, the United States nor any state environmental agency is prohibited from seeking any discovery in accordance with the Federal Rules.

7. Nothing in this Order shall affect the Debtors' authority to pay claims to the extent authorized by a separate order of the Court.

8. Nothing in this Order shall obligate the Debtors to settle or pursue a settlement of any particular claim. Settlements of claims may be negotiated and compromised by the Debtors in their sole discretion (subject to applicable law) and the applicable provisions of a confirmed chapter 11 plan of the WMLP Debtors³ and the WLB Debtors,⁴ respectively; *provided, however*, that the Debtors shall obtain the prior written consent (not to be unreasonably withheld) of (i) the MLP Required Lenders⁵ prior to entering into any settlement or compromise relating to any

³ "WMLP Debtors" means, collectively, Westmoreland Resources GP, LLC, Westmoreland Resource Partners, LP, Westmoreland Kemmerer, LLC, Oxford Mining Company, LLC, Harrison Resources, LLC, Oxford Mining Company-Kentucky, LLC, Daron Coal Company, LLC, Oxford Conesville, LLC and Westmoreland Kemmerer Fee Coal Holdings, LLC.

⁴ "WLB Debtors" means, collectively, Westmoreland Coal Company and certain of its subsidiaries other than WMLP Debtors.

⁵ "MLP Required Lenders" shall have the meaning in the Final Order (I) Authorizing the MLP Debtors to Use Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Certain Protections to Prepetition Lenders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 507, (III) Modifying the Automatic Stay and (IV) Granting Related Relief

WMLP Debtor, and (ii) the Required Consenting Stakeholders⁶ prior to entering into any settlement or compromise relating to any WLB Debtor.

9. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order, the Motion, or the Objection Procedures shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of any right of any Debtor to dispute any prepetition claims on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of any right of any Debtor under the Bankruptcy Code or any other applicable law.

10. This Order, and the Objection Procedures are subject to the terms of the Final Cash Collateral Order and the RSA.

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

[Docket No. 521] (as amended, modified or supplemented from time to time in accordance with the terms thereof, the "Final Cash Collateral Order").

⁶ "Required Consenting Stakeholders" shall have the meaning in the Restructuring Support Agreement (the "RSA") dated as of October 9, 2018, attached as Exhibit A to the *Declaration of Jeffrey S. Stein, Chief Restructuring Officer of Westmoreland Coal Company, in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 54].

13. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

14. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: February 28, 2019.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

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Exhibit 1

Objection Procedures

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Chapter 11
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Debtors.)	(Jointly Administered)

PROCEDURES FOR FILING OMNIBUS CLAIMS OBJECTIONS

1. Grounds for Omnibus Objections. In addition to those grounds expressly set forth in Bankruptcy Rule 3007(d), the Debtors² may file omnibus objections (each, an “Omnibus Objection”) to claims on the grounds (collectively, the “Additional Grounds”) that such claims, in part or in whole:

- (a) are inconsistent with the Debtors’ books and records;
- (b) fail to specify the asserted claim amount (other than “unliquidated”);
- (c) seek recovery of amounts for which the Debtors are not liable;
- (d) are incorrectly or improperly classified;
- (e) have not been formally withdrawn by the claimant through the filing of a withdrawal of proof of claim form, substantially in the form attached to the Order as **Exhibit 3** or through the entry of a Court order indicating withdrawal of the claim;

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² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

- (f) are filed against non-Debtors or are filed against multiple Debtors;
- (g) fail to specify a Debtor against whom the claim is asserted;
- (h) should be disallowed pursuant to section 502 of the Bankruptcy Code;
- (i) are disallowed or subordinated to all claims and interests senior to or equal to the asserted claim or interest arising out of the purchase or sale of a security of the Debtor or affiliate pursuant to section 510(b) of the Bankruptcy Code; or
- (j) fail to sufficiently specify the basis for the claim or provide sufficient supporting documentation therefor.

2. Numbering of Omnibus Objections. Each Omnibus Objection will be numbered consecutively, regardless of basis.

3. Supporting Documentation. To the extent appropriate, Omnibus Objections may include an affidavit or declaration that provides a factual basis for the Debtors' objection to the applicable claims, including from an individual with personal knowledge of the Debtors' books and records and the manner in which they are maintained, which states that the affiant or the declarant has reviewed the applicable claims included therein and supporting information and documentation provided therewith, made reasonable efforts to research the claims on the Debtors' books and records, and determined that the books and records do not reflect the debt or the amount of debt that is alleged in the claims.

4. Claim Exhibits. An exhibit listing the claims that are subject to the particular Omnibus Objection will be attached thereto. Each exhibit will include only the claims to which there is a common basis for the objection. Claims for which there is more than one basis for the objection will be referenced on each exhibit applicable thereto. The exhibits will include, without limitation, the following information alphabetized by claimant:

- (a) the claims that are the subject of the Omnibus Objection and, if applicable, the proof of claim number related thereto from the claims register;
- (b) the asserted amount of the claim;
- (c) the grounds for the objection;
- (d) a cross-reference to the section of the Omnibus Objection discussing such claim; and
- (e) other information, as applicable, including (i) the proposed reclassification or redesignation of claims the Debtors are seeking to implement, (ii) the reduced claim amounts of claims the Debtors are seeking to reduce; or (iii) the surviving claims of claimants affected by the Omnibus Objection.

5. Objection Notice. Each Omnibus Objection will be accompanied by a customized objection notice, substantially in the form annexed to the Order as **Exhibit 2** (the “Objection Notice”), tailored, as appropriate, to address a particular creditor, claim, or objection, which will:

- (a) describe the basic nature of the objection;
- (b) inform creditors that their rights may be affected by the objection;
- (c) describe the procedures for filing a written response (each, a “Response”) to the objection, including all relevant dates and deadlines related thereto;
- (d) identify the hearing date, if applicable, and related information; and
- (e) describe how copies of proofs of claim, the Omnibus Objection, and other pleadings filed in the chapter 11 cases may be obtained.

6. Notice and Service. Each Omnibus Objection will be filed with the Court and served electronically using the Court’s electronic filing system. In addition, each affected claimant will receive a customized notice by regular mail.

7. Omnibus Claims Objection Hearings. Each Omnibus Objection shall be set for hearing no less than 44 calendar days after service of the Omnibus Objection (each, a “Hearing”), unless otherwise ordered by the Court. In the Debtors’ sole discretion, and after notice to the affected claimant and the Notice Parties (as defined herein), the Debtors may (without further order of the Court) adjourn the Hearing on the Omnibus Objection to a subsequent hearing date by filing

a notice or statement on the record. For claims subject to an Omnibus Objection and with respect to which either no Response is filed in accordance with the proposed response procedures and no appearance is made at the Hearing, or a Response is filed in accordance with the proposed response procedures but such Response is resolved prior to the Hearing, the Debtors may request at the Hearing that the Court enter an order granting the Omnibus Objection with respect to such claim. Contested claims for which (a) a Response is filed in accordance with the proposed response procedures but such Response is not resolved prior to the Hearing *and* (b) an appearance is made at the Hearing, may be heard at the Hearing or adjourned to a subsequent hearing date in the Debtors' sole discretion with prior notice to the affected parties and the Notice Parties. If a subsequent hearing is determined to be necessary, the Debtors shall file with the Court and serve on the affected claimants and the Notice Parties a notice of the subsequent hearing (the date of which shall be determined in consultation with the affected claimant(s)) or announce such adjournment on the record.

8. Contested Matter. Each claim subject to an Omnibus Objection and the Response thereto shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014, and any order entered by the Court will be deemed a separate order with respect to such claim. The Debtors may, in their discretion and in accordance with other orders of this Court, and the provisions of the Bankruptcy Code and the Bankruptcy Rules, settle the priority, amount, and validity of such contested claims without any further notice to or action, order, or approval of the Court, subject to the requirements set forth in any confirmed chapter 11 plan and obtaining the prior written consent (not to be unreasonably withheld) of (i) the MLP Required Lenders prior to entering into any settlement or compromise relating to any WMLP Debtor and (ii) the Required

Consenting Stakeholders prior to entering into any settlement or compromise relating to any WLB Debtor.

Responses to Omnibus Objections

9. Parties Required to File a Response. Any party who disagrees with an Omnibus Objection is required to file a Response in accordance with the procedures set forth herein, and to appear at the Hearing (which appearance may be made telephonically, if permission is requested and granted by the Court in advance of the Hearing in accordance with the Court's *Court Procedures and Practice Tips*). If a claimant whose claim is subject to an Omnibus Objection does not file and serve a Response in compliance with the procedures below or fails to appear at the Hearing, the Court may grant the objection with respect to such claim without further notice to the claimant.

10. Response Contents. Each Response must contain the following (at a minimum):
- (a) a caption stating the name of the Court, the name of the Debtors, the case number, and the Omnibus Objection to which the Response is directed;
 - (b) a concise statement setting forth the reasons why the Court should not grant the objection with respect to such claim, including the factual and legal bases upon which the claimant will rely in opposing the Omnibus Objection;
 - (c) a copy of any other documentation or other evidence of the claim, to the extent not already included with the claim, upon which the claimant will rely in opposing the objection; *provided* that the claimant need not disclose confidential, proprietary, or otherwise protected information in the Response; and, *provided, further*, that the claimant shall disclose to counsel to the Debtors, Committee, the WLB Ad Hoc Group, and the MLP Required Lenders all information and provide copies of all documents that the claimant believes to be confidential, proprietary, or otherwise protected and upon which the claimant intends to rely in support of its claim, subject to appropriate confidentiality constraints;
 - (d) a declaration or other statement of a person with personal knowledge of the relevant facts that support the Response; and
 - (e) the following contact information for the responding party:

the name, address, telephone number, and email address of the responding claimant or the name, address, telephone number, and email address of the claimant’s attorney or designated representative to whom the attorneys for the Debtors should serve a reply to the Response, if any; or

the name, address, telephone number, and email address of the party with authority to reconcile, settle, or otherwise resolve the objection on the claimant’s behalf.

11. Filing and Service of the Response. A Response will be deemed timely only if it is filed with the Court and served electronically using the Court’s electronic filing system and actually received by 4:00 p.m. (prevailing Central Time) on the day that is thirty (30) calendar days from the date the Omnibus Objection is served (the “Response Deadline”), unless as otherwise ordered by the Court, by the following parties (the “Notice Parties”):

<p style="text-align: center;">Counsel to the Debtors</p> <p style="text-align: center;">Kirkland & Ellis LLP 601 Lexington Avenue New York, New York 10022 Attn.: Stephen E. Hessler, P.C. (stephen.hessler@kirkland.com)</p> <p style="text-align: center;">Kirkland & Ellis LLP 300 North LaSalle Chicago, Illinois 60654 Attn.: Gregory F. Pesce (gregory.pesce@kirkland.com) and Christopher S. Koenig (chris.koenig@kirkland.com)</p>	<p style="text-align: center;">The United States Trustee</p> <p style="text-align: center;">Office of the United States Trustee for the Southern District of Texas 515 Rusk Street, Suite 3516 Houston, Texas 77002 Attn.: Stephen Statham</p>
<p style="text-align: center;">Counsel to the WLB Ad Hoc Group</p> <p style="text-align: center;">Kramer Levin Naftalis & Frankel LLP 1177 Avenue of the Americas New York, New York 10036 Attn.: Thomas Moers Mayer (tmayer@kramerlevin.com) and Stephen D. Zide (szide@kramerlevin.com)</p>	<p style="text-align: center;">Counsel to the Official Committee of Unsecured Creditors</p> <p style="text-align: center;">Morrison & Foerster LLP 250 West 55th Street New York, New York 10019 Telephone: (212) 468-8000 Facsimile: (212) 468-7900 Attn: Lorenzo Marinuzzi, Esq. (lmarinuzzi@mofocom) and Todd M. Goren, Esq. (tgoren@mofocom) and Jennifer L. Marines, Esq. (jmarines@mofocom)</p>
<p style="text-align: center;">Counsel to the MLP Secured Lenders/MLP Ad Hoc Group</p> <p style="text-align: center;">Schulte Roth & Zabel LLP 919 Third Avenue New York, New York 10022 Attn.: David M. Hillman (david.hillman@srz.com) and Kristine G. Manoukian (kristine.manoukian@srz.com)</p>	<p style="text-align: center;">Counsel to the Conflicts Committee of the Board of Directors of Westmoreland Resources GP, LLC</p> <p style="text-align: center;">Jones Day 901 Lakeside Avenue Cleveland, Ohio 44114 Attn.: Heather Lennox (hlennox@jonesday.com) and Oliver Zeltner (ozeltner@jonesday.com)</p>

Counsel to the Claims Administrator (solely with respect to claims filed against the WLB Debtors)	
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12. Discovery. If the Debtors determine that discovery is necessary in advance of a hearing on an Omnibus Objection, the Debtors will serve notice on the affected claimant and its counsel of record and the Notice Parties that the scheduled hearing will be treated as a status conference during which the parties will request that the Court issue a scheduling order to facilitate dismissal or resolution of the litigation. Such notice may be incorporated into the initial agenda letter for the hearing, or may be provided by separate notice.

13. Failure to Respond. A Response that is not filed and served in accordance with the procedures set forth herein may not be considered by the Court at the Hearing. **Absent reaching an agreement with the Debtors resolving the objection to a claim (as described in the Objection Notice), failure to timely file and serve a Response as set forth herein or to appear at the Hearing may result in the Court granting the Omnibus Objection without further notice or hearing.** Upon entry of an order sustaining an Omnibus Objection, affected creditors will be served with such order.

14. Reply to a Response. The Debtors shall be permitted to file a reply to any Response no later than seven (7) business days before the hearing with respect to the relevant Omnibus Objection.

Miscellaneous

15. Additional Information. Copies of these procedures, the Motion, the Order or any other pleadings (the “Pleadings”) filed in these chapter 11 cases are available at no cost at the Debtors’ Claims and Noticing Agent’s website www.donlinrecano.com/westmoreland. You may also obtain copies of any of the Pleadings filed in these chapter 11 cases for a fee at the Court’s website at <http://www.txs.uscourts.gov/bankruptcy>. A login identification and password to the

Court's Public Access to Court Electronic Records ("PACER") are required to access this information and can be obtained through the PACER Service Center at <http://www.pacer.psc.uscourts.gov>.

16. Reservation of Rights. NOTHING IN ANY OMNIBUS OBJECTION OR OBJECTION NOTICE IS INTENDED OR SHALL BE DEEMED TO CONSTITUTE (A) AN ADMISSION AS TO THE VALIDITY OF ANY PREPETITION CLAIM AGAINST A DEBTOR ENTITY; (B) A WAIVER OF ANY RIGHT OF ANY DEBTOR TO DISPUTE ANY PREPETITION CLAIM ON ANY GROUNDS; (C) A PROMISE OR REQUIREMENT TO PAY ANY PREPETITION CLAIM; (D) AN IMPLICATION OR ADMISSION THAT ANY PARTICULAR CLAIM IS OF A TYPE SPECIFIED OR DEFINED IN THIS MOTION OR ANY ORDER GRANTING THE RELIEF REQUESTED BY THIS MOTION; (E) A REQUEST OR AUTHORIZATION TO ASSUME ANY PREPETITION AGREEMENT, CONTRACT, OR LEASE PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE; OR (F) A WAIVER OF ANY RIGHT OF ANY DEBTOR OR UNDER THE BANKRUPTCY CODE OR ANY OTHER APPLICABLE LAW.

Houston, Texas
_____, 2019

/s/

Matthew D. Cavanaugh (Bar No. 24062656)

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